

21 C.J.S. Courts § 335

Corpus Juris Secundum | May 2023 Update

Courts

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X. Clerks of Courts

C. Powers and Duties

§ 335. Judicial or ministerial powers and duties

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West's Key Number Digest

West's Key Number Digest, [Clerks of Courts](#)  65 to 67

The clerk cannot, without express constitutional or statutory authority, exercise any judicial functions.

Inasmuch as a clerk of court is essentially a ministerial officer, the clerk cannot, without express constitutional or statutory authority, exercise any discretionary judicial functions.¹ Duties involving the exercise of judicial power are reserved to judges and may not be delegated to the clerk although ministerial duties of a judge incident to judicial power, such as administering oaths, may be delegated to the clerk by statute or by court order.²

It follows that a clerk of court cannot ordinarily determine questions of law,³ render judgments,⁴ or impose sentences,⁵ fines,⁶ fees, or costs.⁷ A court clerk has no authority to dismiss an action for lack of prosecution absent the entry of a proper and unconditional order from the court.⁸

By contrast, ministerial duties which may be performed by clerks of court include the issuance of process,⁹ the filing of court papers and pleadings,¹⁰ the assignment of case numbers,¹¹ the entry of orders and judgments,¹² the signing of a judgment upon the written order of a judge,¹³ and the recording a judgment endorsed for entry by the signature of the judge.¹⁴

Under statutes or constitutional provisions, clerks of court may be vested with certain judicial or quasi-judicial powers.¹⁵ Where this is the case, the clerk's authority is strictly limited within the terms of the statutory or constitutional provision conferring it.¹⁶

Under a statute so providing, a clerk for the state's highest court has the authority to give his or her opinion on any question of the interpretation of any rule of administration promulgated by the court.¹⁷

CUMULATIVE SUPPLEMENT

Cases:

Superior Court clerk had jurisdiction to appoint paternal aunt as guardian for children after father's death, despite custody petition which stepmother filed in District Court; children had no natural guardian upon father's death, and jurisdiction was not divested by ex parte temporary custody order already entered by the District Court on stepmother's petition for custody. *N.C. Gen. Stat. Ann. § 35A-1221(4)*. *Corbett v. Lynch*, 795 S.E.2d 564 (N.C. Ct. App. 2016).

[END OF SUPPLEMENT]

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Footnotes

- 1 Mass.—*Agnetta v. State Street Bank*, 42 Mass. App. Ct. 904, 674 N.E.2d 653 (1997).
Wis.—*Mikrut v. State*, 212 Wis. 2d 859, 569 N.W.2d 765 (Ct. App. 1997).
- 2 Cal.—*People v. Frontier Pacific Ins. Co.*, 83 Cal. App. 4th 1289, 100 Cal. Rptr. 2d 433 (3d Dist. 2000).
- 3 Ohio—*Huntington Nat. Bank v. Miller*, 36 Ohio App. 3d 208, 521 N.E.2d 844 (10th Dist. Franklin County 1987).
Statute of limitations
It was not within province of clerk of court to determine whether case was barred by statute of limitations.
Wyo.—*Bauer v. State ex rel. Wyoming Worker's Compensation Div.*, 695 P.2d 1048 (Wyo. 1985).
- 4 Ind.—*Moore v. Moore*, 482 N.E.2d 1176 (Ind. Ct. App. 1985).
Neb.—*Building Systems, Inc. v. Medical Center, Ltd.*, 228 Neb. 168, 421 N.W.2d 773 (1988).
- 5 Ill.—*People v. Swank*, 344 Ill. App. 3d 738, 279 Ill. Dec. 576, 800 N.E.2d 864 (4th Dist. 2003).
Correction of clerical error
A clerk of court may not correct a clerical error in the sentence portion of a written judgment of conviction independent of the court.
Wis.—*State v. Prihoda*, 2000 WI 123, 239 Wis. 2d 244, 618 N.W.2d 857 (2000).
- 6 Ill.—*People v. Swank*, 344 Ill. App. 3d 738, 279 Ill. Dec. 576, 800 N.E.2d 864 (4th Dist. 2003).
Okla.—*Petuskey v. Cannon*, 1987 OK 74, 742 P.2d 1117 (Okla. 1987).
- 7 Okla.—*Petuskey v. Cannon*, 1987 OK 74, 742 P.2d 1117 (Okla. 1987).
Attorney's fees
U.S.—*Robinson v. Kimbrough*, 652 F.2d 458 (5th Cir. 1981).

- 8 Neb.—Harvey Oaks Dental, P.C. v. Peter Letterese & Associates, Inc., 7 Neb. App. 403, 583 N.W.2d 72 (1998).
- 9 Cal.—Maginn v. City of Glendale, 72 Cal. App. 4th 1102, 85 Cal. Rptr. 2d 639 (2d Dist. 1999).
Tex.—Sharp v. State, 677 S.W.2d 513 (Tex. Crim. App. 1984).
- 10 Cal.—Voit v. Superior Court, 201 Cal. App. 4th 1285, 134 Cal. Rptr. 3d 381 (6th Dist. 2011).
Wash.—State v. Flaherty, 177 Wash. 2d 90, 296 P.3d 904 (2013).
- 11 Utah—Carter v. State, 2015 UT 38, 345 P.3d 737 (Utah 2015).
- 12 U.S.—Swarb v. Lennox, 405 U.S. 191, 92 S. Ct. 767, 31 L. Ed. 2d 138 (1972).
Ky.—Mischler v. Thompson, 436 S.W.3d 498 (Ky. 2014), as modified on denial of reh'g, (Aug. 21, 2014).
Neb.—Building Systems, Inc. v. Medical Center, Ltd., 228 Neb. 168, 421 N.W.2d 773 (1988).
- 13 Wis.—State v. Prihoda, 2000 WI 123, 239 Wis. 2d 244, 618 N.W.2d 857 (2000).
- 14 W. Va.—State ex rel. Core v. Merrifield, 202 W. Va. 100, 502 S.E.2d 197 (1998).
- 15 N.C.—Matter of Adamee's Estate, 291 N.C. 386, 230 S.E.2d 541 (1976).
W. Va.—Starcher v. South Penn Oil Co., 81 W. Va. 587, 95 S.E. 28 (1918).
- 16 N.C.—Matter of Legitimation of Locklear by Jones, 314 N.C. 412, 334 S.E.2d 46 (1985).
Wis.—Mikrut v. State, 212 Wis. 2d 859, 569 N.W.2d 765 (Ct. App. 1997).
- 17 Ala.—Opinion of the Clerk, 386 So. 2d 739 (Ala. 1980).